

Scrutinising the Law on Olders in India

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The rights on Maintenance and Welfare of Parents and Senior Citizen Act, 2007 came into existence in 2007, in India the law on olders already existed in Hindu Law, Muslim Law, Christian and Parasi Law, Constitution, Code of Criminal Procedure.

1. Hindu Law

It is moral duty of every person to maintain his parents. However, so far as law is concerned, the positions and extent of such liability varies from community to community, Amongst the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was recognized even in early texts. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory provision for maintenance of parents under Hindu personal law is contained in sections 20, 21 and 22 of the Hindu Adoption and Maintenance Act, 1956.

This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

Now having a view on sections:

Section 20 deals with “Maintenance of Child and Aged Parents”. According to this section:-

- (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate children and his or her **aged or infirm parents**.

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- (2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
- (3) The obligation of a person to maintain **his or her aged or infirm parent** or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain him or herself out of his or her own earning or other property.

Explanation: In this section “Parents” includes a childless **step-mother**.

Section 21 defines the expression “*Dependants*”. This section says that ‘dependants’ mean the following relatives of the deceased:-

- (i) His or her father;
- (ii) His or her mother;
- (iii) His widow, so long as she does not re-marry;
- (iv) x x x x x (Not relevant here)
- (v) x x x x x (Not relevant here)
- (vi) x x x x x (Not relevant here)
- (vii) x x x x x (Not relevant here)
- (viii) x x x x x (Not relevant here)
- (ix) x x x x x (Not relevant here)

Section 22 speaks about “Maintenance” of dependants.

According to this section:-

- (1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.
- (2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
- (3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- (4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has

obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

Parents: The parents of a Hindu have a right to maintenance against the property of their daughter or son inherited by any person. The mother is a Class I heir and father is in category of Class II heirs of a Hindu male. The father being in Class II of the heirs of a Hindu male, he will not take property in the presence of the mother or any other Class I heir. And it may happen that the mother may be excluded by the will of the deceased. As to the heirs of a Hindu female, parents come in entry III and even on intestate succession their turn will come much later. Even when they are heirs, they may be excluded by the will of the deceased Hindu female. When parents do not get a share in the property of their son or daughter whosoever gets it takes it subject to their right of maintenance.

Section 21 nowhere says that if the parents have independent means of maintenance, the heir has no obligation to maintain them. Thus lack of means on the part of parents to maintain themselves is not a condition precedent for their claim of maintenance though the court, while fixing the amount of maintenance, will take into accounts the income or other property of the claimant. Thus the existence of independent means of maintenance on the part of the mother or father will affect the quantum of maintenance and not their right to claim maintenance.

2. Maintenance of Parents under Muslim Law:

Under Muslim Law, the children are bound to maintain their necessitous parents and grandparents. The Islamic principle is that as the children have right to be maintained by their parents, they have also a corresponding duty to provide maintenance to their parents, if need be so. Rules of Muslim Law, relating to the maintenance of parents may be stated as under:

- (1) The children are bound to maintain their parents only if they are in easy circumstances and the parents are poor .In other words ,only needy parents are entitled to get maintenance from their children .By easy circumstances is meant a circumstance in which a person need not depend on begging for his livelihood. On the other hand, a person is needy or necessitous if he has to beg for his livelihood.
- (2) Sons and daughters, both are equally liable to maintain their parents. There is no difference between a son and a daughter in respect of this liability; their responsibility to maintain the

parents is joint and equal. But, if a child is poor and the other is in easy circumstances, the liability lies on the child who is in easy circumstances.²

- (3) A son though poor and is in strained circumstances, is bound to maintain his mother, if she is poor. A son, who is poor but is earning something, is bound to support his poor father who earns nothing.³
- (4) If a child is in a position to support only one of its parents, the mother gets priority over father. But, under the *Ithna Asharia Law*, the child may distribute the maintenance allowance between father and mother equally, if both of them are needy.⁴
- (5) If the children are unable to support their parents separately, they may be compelled to take their parents with them and to live together.
- (6) A son is not bound to maintain his step-mother. Thus, he is not bound to maintain that wife of his father who is not his own mother. Where a father has two or more wives, the maintenance of one should be delivered to him to dispense among all of them.⁵
- (7) Even if the religion of the parents differs from that of the children the parents are entitled to be maintained, provided they are poor.⁶

Maintenance of the Grand-Parents

The children are bound to provide maintenance to their paternal or maternal grand-parents if the grand-parents are poor need support for their livelihood. But the grand –parents are entitled to maintenance from their grand-children only in the absence of their own children. Thus, grand–parents are not entitled to maintenance from grand-children if they have their own children.

Statutory Provisions for the Maintenance of Parents

Under Section 125 of the Criminal Procedure Code, 1973, provision has been made also for the maintenance of parents. A magistrate of the class may order a person to make monthly allowance, not exceeding rupees **five hundred**, if the person has sufficient means but neglects or refuses to maintain his father or mother who is unable to maintain himself (or

² KasimVs Sadiq,(1938) PC 169

³ Mulla: Principles of Mohammedan Law, Ed. XVIII, P.385.

⁴ Tyabji: Muslim Law,Ed.IV,p.274.

⁵ Baillie: Digest of Mohammedan Law, Part I, Ed. II (1957),P.466.

⁶ Fatwa-i-Alamgiri cited in Tyabji: Muslim Law,Ed.IV,p.283.

herself).The statutory rules relating to the maintenance of parents are the same as that for the children.

It may be noted that that the Criminal Procedure Code, 1973, is applicable to all the persons without any reference to their religion. The result is that the parent's right of maintenance is not affected if the parents have become non-Muslims.

3. **Christian And Parsi Law**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code

4. **The Provisions for the Maintenance of Parents under Criminal Procedure Code,1973**

Chapter IX of the Code of Criminal Procedure, 1973 consists of Sections 125 to 128 which deal with the "**Order for maintenance of wives children and parents**".

Under Section 125(1) (d) of the Criminal Procedure Code, 1973, provision has been made also for the **maintenance of parents**. A Magistrate of the first class may order a person to make a monthly allowance, at such monthly rate, as the Magistrate thinks fit, if the person has sufficient means but neglects or refuses to maintain his father or mother who is unable to maintain himself (or herself).The statutory rules relating to the maintenance of parents are the same as that for the children.

It is pertinent to mention here that; amount of maintenance varies from state to state. In **U.P.** the Magistrate of first class may order the maintenance allowance up to Rupees **five thousand** per month ,in **M.P.** Rupees **three thousand** per month in, **Maharashtra** Rupees **one thousand** in **Rajasthan** Rupees **two thousand** per month and in **WestBengal** Rupees **one thousand** per month.

The Apex court in *Vijaya v. Kashirao Rajaram*⁷ has observed:

In view of Section 125(1) (d) parents unable to maintain themselves, can get maintenance from their son or daughter having sufficient means. An adult daughter has the same obligation as a son has.

⁷ A.I.R 1987 S.C 1100.

It is not mandatory that a parent should maintain application against all sons or all daughters. A parent can maintain an application under Section 125 Cr.P.C. against one son or one daughter without impleading other sons or daughters. The same view has been propounded by the Madras High Court in *A.Ahathinamiligai v.Arumaghan*⁸.

When the father refused to live with one son and is able to save money from the allowance given by the other son the father is not entitled to get maintenance from the son with whom he refused to live.⁹

In *Purshottam Bhattra V. Family Court,Jaipur*¹⁰ the Rajasthan High Court held that the claim of maintenance by the parents is based on pious obligation of the son to maintain the parents and the son is duty bound to discharge such obligation. Since, the appellant son ignored his old parents, he had been rightly directed to maintain them.

Mother can claim additional sum from one son. A mother has four sons, two of them work as coolies and had no means to maintain the mother, another son who is constable gives her Rs.400/-per month with which he is unable to maintain properly. The fourth son who is working as a mechanic is earning well. The mother has filed a petition claiming additional sum from the mechanic son. The son resists the claim pleading that as the mother is getting maintenance from one son, she had no right to claim further maintenance from him. Though the Trial Court accepted the plea of the son and dismissed her petition, the High Court in revision on being satisfied that the amount of Rs.400/-per month is not sufficient to maintain the mother directed the mechanic son to pay her Rs.700/-per month.¹¹

For maintenance, not necessary to live with son:-

When the mother claims maintenance from her son, the son can not refuse to pay maintenance to her on the ground that the mother is not living with him but with her married daughter. Law does not compel the parents to necessarily live with the son in order to claim maintenance from him.¹²

⁸1988 Cri.L.J 6(Mad).

⁹ Attar Singh Vs Amar Singh,1982 Cri.L.J 211, (Del).

¹⁰ A.I.R2007 N.O.C 898(Raj).

¹¹ Zubedabi Vs Niaz Mohammed,1999Cr.L.J 1326(Kant).

¹² C.Balan Vs C.devi, A.I.R2009 (N.O.C) 1016 (Ker).

It may be noted that the Criminal Procedure Code,1973,is applicable to all the persons without any reference to their religion .The result is that the parent's right of maintenance is not affected if the parents have become non-Muslims.

Section 126 deals with the '**procedure**' where proceedings under section 125 Cr.P.C. may be taken against a person.

According to Section 126(1) proceedings under Section 125 Cr.P.C. may be taken against any person in any district:-

- (a) where he is ,or
- (b) where he or his wife resides, or
- (c) Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

In case of parents:-The benefits given to the wife and the children to initiate proceedings at the place where they reside is not given to the parents. Unlike clauses (b) and (c) of Section 126(1), an application by the father or the mother claiming maintenance, has to be filed where the person from whom maintenance is claimed, lives.¹³

Section 127 states that on proof of a change in the circumstances of any person, receiving under Section 125Cr.P.C. monthly allowance for maintenance or interim maintenance payable to his **wife, child, father** or **mother** as the case may be, the Magistrate may make such alteration as he thinks fit.

Section 128 of the Code of Criminal Procedure speaks about enforcement of order of maintenance.

5. Constitutional provision regarding rights of maintenance of aged and weaker sections

Part IV of the Indian Constitution (dealing with the Directive Principles of State Policy) has taken up the concerns of the aged persons. The Directive Principles empower the State to lay down policies for helpless and elderly persons.

Article 39(a) lays down that the citizens, **men** and **women** equally, have the right to an adequate means of livelihood;

¹³ Vijay Kumar Prasad Vs State of Bihar A.I.R 2004 SC 2123.

Article 41 speaks that the State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, **old age, sickness and disablement**, and in other cases of undeserved want.

Article 46 states that the State shall promote with special care the educational and economic interests of the **weaker sections** of the people, and, in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

The state is empowered to lay down appropriate guidelines for weaker sections .It would not be out of context to mention here that the expression “**weaker section**” includes **aged, sick and infirm** also.

The object of “Directive Principle” is to embody the concept of welfare State.¹⁴ However, the directives do not confer any enforceable rights (directives are not enforceable)¹⁵ and their alleged breach does not invalidate a law, nor does it entitle a citizen to complain of its violation by the State so as to seek mandatory relief against the State.

¹⁴ Keshaananda Bharti Vs State of Kerla A.I.R 1973 S.C. 1461.

¹⁵ Article 37.

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